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United States Court of Appeals  
FOR THE NINTH CIRCUIT.

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No. 16,139.

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ROY VERNON SHAW,  
*Appellant,*

vs.

UNITED STATES OF AMERICA,  
*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

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**APPELLANT'S REPLY BRIEF.**

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APPELLEE'S ARGUMENT IS

1. Shaw's written communications did not *expressly* request a reopening;
2. Shaw's evidence was not *new evidence*;
3. Shaw's argument that the local board did not inform him of its refusal to reopen was not made to the trial court and, besides, the local board was not required to so inform him.

## APPELLANT'S REPLY IS

### 1.

#### An Express Request for a Reopening of a Classification Is Not Necessary.

In the first place, selective service registrants are not to be treated as litigants in an adversary proceeding.

*Cox v. Wedemeyer*, 9 Cir., 192 F. 2d 920, 923.

Additionally, they are to be given the benefit of any doubt that exists concerning compliance with procedural requirements, and the courts have so held even in habeas corpus situations:

*Talcott v. Reed*, 9 Cir., 217 F. 2d 360, 363;  
*Berman v. Craig*, 3 Cir., 207 F. 2d 888, 891;

citing

*Chih v. U. S.*, 1st Cir., 142 F. 2d 919, and others;  
*U. S. v. Derstine*, 129 F. Supp. 117, 120;  
*U. S. v. Hufford*, 103 F. Supp. 859, 862.

Also see

*Brown v. U. S.*, 9 Cir., 216 F. 2d 258, at 260.

Finally, courts have already expressly held that a specific request, in a variety of selective service circumstances, is not necessary. *Townsend v. Zimmerman*, 6 Cir., 237 F. 2d 376

“The communication of the information by Townsend to the draft board chairman of his change of status [oral, see page 377] was tantamount to a request that

his classification be reopened. Under the circumstances of this case it was not necessary that a more formal request be made. Cf. *Ex parte Fabiani*, D. C. E. D. Pa. 1952, 105 F. Supp. 139, 148." (378).

*U. S. v. Howe*, 144 F. Supp. 342, 344.

*Ex parte Fabiani*, 105 F. Supp. 139, Judge McGranery:

"The fact that petitioner never "specifically" requested the reopening of his case is unimportant." (148).

## 2.

### **Shaw's Evidence Was "New Evidence" of New Status.**

In the Opening Brief we argued that evidence of *new status* was presented by Shaw's communications.

Appellee's argument, in this as in all its phases, leans heavily on the trial court's findings. These findings can rest only on the record.

With respect to this point as well as all others involved, appellant is asking this court to find that the record does not support the trial court's findings.

The record indisputably shows that Shaw became a *servant* and soon afterwards was given even greater ministerial responsibilities (Exs. 100, 105, 105A, 109). What does appellee say about this in Appellee's Brief? Appellee relies partly on the conclusion of the trial judge (16) and partly on its own argument.

And what does appellee argue? That Shaw considered the affidavits as character references. Shaw's selective service status is determined by his evidence; the effect of his evidence is not limited to his limited understanding of selective service law. A registrant presents facts; the Selec-

tive Service System has the duty of correctly classifying. The registrant is not required to know the classification significance of all his evidence.

There can be no question that registrants' classifications are to follow changes in status, barring cut-off date problems. There being no cut-off problem here, the only question is: Was there a *seeming* change of status? As argued in the Opening Brief the question Was there a change of status? is an administrative one *with appellate rights*. It is not one we are concerned with here unless it is considered that the evidence is so flimsy that no one could possibly disagree on the point.

Here, there was such a substantial difference between the two statuses that Shaw was entitled to the opportunity to ask for an administrative appeal. Many arguments by analogy can be made. One by the Seventh Circuit in *Hull v. Statler*, 151 F. 2d 633, suppose a lawyer be appointed a judge.

Where is the line where one of Jehovah's witnesses ceases being one of the flock and becomes one of the shepherds?

The decision can often be difficult. See *U. S. v. Wasserman*, 128 F. Supp. 759, at 763. Although the court's decision in the Wasserman case was adverse to the claim, the reasoning (citing *Estep v. United States*, 66 S. Ct. 423) was sound, particularly that it is an administrative decision. Also *U. S. v. Steinhart*, 129 F. Supp. 594, 597.

It is submitted that the evidence of change of status was of sufficient amount to justify appellate administrative opportunity.

**The Local Board Was Required to Inform Shaw of Its  
Rejection of His New Evidence; and This  
Point Was Before the Trial Court.**

The above proposition, in inverse order:

The trial court's Order for Judgment (see page 8 of Appendix to Appellee's Brief) quotes 32 C. F. R., Sec. 1625.4, in full. This regulation, in part, says:

"In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file."

Also see page two of said Appendix: Ground number 2 of the motion includes the above proposition.

Appellee's argument that the board is not required to obey the regulation is no more than a referral to one already made:

"This contention must also fail because there is no written request to reopen appellant's classification. We hereby incorporate our argument given in Point Two above on the necessity and absence of a written request to reopen in order to come within the purview of this regulation." (page 18 of Appellee's Brief).

Finally, appellee distinguishes the cases presented by appellant and concludes they are not "binding or controlling". All this can be conceded. The point is new to this court but similar problems have already been decided, and

were presented to aid in the decision of how much due process protection is to be given selective service registrants.

Respectfully submitted,

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